

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MITKO TODOROV,

Defendant-Appellant.

---

UNPUBLISHED

March 9, 2006

No. 257158

Wayne Circuit Court

LC No. 03-005356-01

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant was charged with receiving or concealing a stolen vehicle. MCL 750.535(7). At the conclusion of a bench trial, the trial court found him guilty of unlawful use of an automobile, MCL 750.414, although neither the prosecution nor defendant had requested consideration of that offense. Defendant was sentenced to 30 days in jail. He appeals by of right. We reverse. This case is being decided without oral argument under MCR 7.214(E).

Defendant argues that he was improperly convicted of unlawful use of an automobile because that offense is not a necessarily included lesser offense of receiving or concealing a stolen vehicle. Relying on MCL 768.32 and *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002), the prosecution has filed a confession of error in which it agrees that defendant's conviction must be reversed. We likewise agree.

We agree that defendant's conviction of unlawful use of an automobile was improper because that offense was not charged and is not a necessarily included lesser offense of receiving or concealing a stolen vehicle. MCL 768.32(1) permits a jury, or a judge in a trial without a jury, to convict a defendant on a lesser offense only when it is necessarily included in a charged offense. *People v Reese*, 466 Mich 440, 446; 647 NW2d 498 (2002); *Cornell, supra* at 349 n 5. A necessarily included offense is one which must be committed as part of the greater offense, i.e., it is impossible to commit the greater offense without first having committed the lesser. *People v Bearss*, 463 Mich 623, 627; 625 NW2d 10 (2001).

A person is guilty of unlawful use of an automobile when he “takes or uses without authority any motor vehicle without intent to steal the same.” MCL 750.414; See *People v Crosby*, 82 Mich App 1, 3; 266 NW2d 465 (1978). In contrast, defendant was charged with violating MCL 750.535(7), which provides: “A person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing that the motor vehicle is stolen,

embezzled, or converted.” It is possible to receive or conceal a stolen motor vehicle by buying, concealing, or aiding in its concealment without first taking or using it as required to commit unlawful use of an automobile. Therefore, the latter offense is not a necessarily included lesser offense of the former. *Bearss, supra* at 627. Accordingly, the trial court erred by convicting defendant of unlawful use of an automobile as a lesser offense of receiving or concealing stolen property. *Cornell, supra* at 353-355. Because MCL 768.32 did not permit defendant’s conviction of unlawful use of an automobile, the conviction must be reversed. *People v Alter*, 255 Mich App 194, 200-201; 659 NW2d 667 (2003).

We reverse.

/s/ Jessica R. Cooper  
/s/ Kathleen Jansen  
/s/ Jane E. Markey